(3)

CF10/4

IN THE HIGH COURT OF JUDICATURE AT

BILASPUR CHHATTISGARH

W.P. NO. 381 /2004

PETITIONER : Jawaharlal Yadav, aged 45 years
S/o. Ramdayal Yadav
R/o.Vill. Balangi,
Tahsil Vadrafnagar,
District Sarguja (C.G.)

PROPOSED PARTY

P. R. No. 333/04
Presented by Shri D.N. Rajapali
dated 04.02.04

VERSUS

RESPONDENTS : 1. Samaria Wd/o Late Ramdulare
Defendants Aged 65 Years,
2. Jhagaru S/o Ramdulare
Aged 50 Years,
3. Funmunia D/o Late Ramdulare
W/o Bodhe Ahir, aged 40 Years
1 to 3 are R/o Village Balangi,
Tahsil Vadrafnagar, District
Sarguja (C.G.)
4. Fulmatia D/o Late Ramdulare
W/o Ramvriksha, R/o vill Kogwar,
Tahsil Vadrafnagar,
Distt. Sarguja (C.G.)
5. Ayodhya S/o Jagan (Died)

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Clerk to A. G. Bilaspur

शपथ आयुक्त
एस के गुप्ता
बिलासपुर तहसील कोर्ट

Formal Party
6. State of Chhattisgarh
Through Collector,
Sarguja, Ambikapur (C.G.)

Plaintiffs
7. Ramdayal S/o Late Ramlakhan,
Aged 65 Years,

(4)

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8. Surajlal S/o Late Ramlakhan aged 60 Years,
9. Sumani Wd/o Late Rambaran aged 42 years,
10. Lukavan S/o Late Rambaran aged 25 years,
11. Dadhar S/o Late Rambaran aged 15 years
12. Prahlad S/o Late Rambaran aged 10 years,
13. Pahlu S/o Late Rambaran aged 8 years,

No. 11 to 13 Minors through natural guadian mother Sumni, No. 7 to 13 are by caste Ahir, R/o Village Balangi, Tahsil Vadrafnagar, District Sarguja (C.G.)

WRIT PETITION UNDER ARTICLE 227 OF CONSTITUTION OF INDIA

(96)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक WP.381/04 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
आ	13.11.2006: Mr. D.N. Prajapti counsel for the petitioner. Mr. V.K. Pandey counsel for respondents 1, 2 and 8. By this petition the petitioner has challenged the legality of the order dated 16.12.2003 passed in Civil Suit No. 5-A/1998 by Civil Judge Class I Ambikapur whereby the application preferred by the plaintiffs/respondents 7 to 13 under Order 22 Rule 4 of the CPC for bringing legal representatives of deceased/defendant Ayodhya Prasad on record has been rejected. The instant petition has been filed by the proposed LRs of deceased/defendant Ayodhya Prasad. Learned counsel for the petitioner submits that by virtue of a will executed by the deceased/defendant Ayodhya Prasad the present petitioner is the legal representative and the Court below ought to have allowed the application of the plaintiffs and impleaded the petitioner as Legal representative of Ayodhya Prasad and thus the order impugned is contrary to law on the face of it. He further submits that as per section 2 (11) of the Code of Civil Procedure the legal representative means that a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued and thus as per the definition under section 2 (11) the petitioner is the legal representative of deceased Ayodhya Prasad. On the other hand learned counsel for respondents 1, 2 and 8 submits that the instant petition is not maintainable as the petitioner being	

13/11/06

मामला क्रमांक W.P.381/04 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the proposed legal representative of the deceased/defendant has no locus standi to file the present petition as the plaintiff has not preferred to challenge the impugned order by which his application for substitution has been rejected.

Heard.

It is not disputed that the respondents/plaintiffs' application for substitution was rejected by the impugned order and they have not challenged the order passed by the Court below. Plaintiff is a dominus litis and it is the prerogative of the plaintiff to substitute the name of the deceased/defendant by bringing their legal representatives on record and failure on his part to do the same may be met with the consequence under the law and it is not open to the legal representatives of the defendant to challenge the order passed in an application preferred by the plaintiff where the application for bringing LRs of the deceased/defendant has been rejected.

Thus the instant petition which is directed against the order of rejection of the application for bringing the LRs of the deceased/defendant Ayodhya Prasad, is not maintainable.

Accordingly, the petition is rejected.

Sd/-
DHIRENDRA MISHRA
Judge

P.T.O.